

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1367 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA.

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements? YES
2. To be referred to the Reporter or not? YES :
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement? NO
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? NO
5. Whether it is to be circulated to the Civil Judge? : NO
NO

AJITSINH CHATURJI RATHOD

Versus

STATE OF GUJARAT

Appearance:

MR RK MISHRA for Petitioner

MR KG SHETH WITH MR SP HASURKAR for Respondent No. 1, 4

NOTICE SERVED BY DS for Respondent No. 2

CORAM : MR.JUSTICE R.BALIA.

Date of decision: 13/09/1999

ORAL JUDGEMENT

1. Rule. Heard learned counsel for the parties.
The petitioner has been appointed as an Extension Officer
[Cooperation] at the District Panchayat, Surat on
27/5/1964. At his own request, the petitioner was
transferred from Surat Panchayat to District Panchayat,
Mehsana at Chanasama on 1/3/1981. As the transfer from
one district to another district has taken place at the
request of the petitioner, he was placed at the bottom of

seniority amongst the Extension Officers as on that date in the District Panchayat, Mehsana, resulting in that for the purpose of seniority amongst Extension Officer of the District on that date, the length of continuous officiation on the post was not taken as criteria of promotions, but was determined on the basis of special rule governing fixing seniority on being transferred to other district on own request, though for all other purpose, the benefit of past service the petitioner carried with him. Vide Government Resolution dated 5th July 1991, the employees were suffering stagnation who have been given benefits of stepping up to three higher grades on the completion of 9 - 18 - 27 years of service respectively, that is to say, on completion of 9 years of service, an incumbent is to be placed in first higher grade and on completion of 18 years of service, he was to be placed in second higher grade and on completion of 27 years of service, the third higher grade. A Scheme was first introduced vide Government Resolution dated 5/7/91 and modified vide resolution dated 6/5/1992 to give relief against stagnancy in the service that the employees who have completed 9 - 18 - 27 years of service on 1/6/87, shall be admissible at a time first, second and third higher grade respectively and the employee who has not actually completed 9 - 18 27 years on 1/6/87, he shall have benefit of higher grade as and when he completes 9 18 - 27 years and was inhibited by the fact that where an incumbent has already availed of promotions prior to the commencement of the scheme which took effect from 1st June 1987, he shall not be eligible for such benefits. The petitioner had not received any promotions and on the premise that he has completed 27 years service, was given the benefit of all the three higher grades. However, this scheme was modified by another resolution dated 16/8/1994 by restricting the benefit to higher grade scale to only one time benefit on the completion of 9 years of service. The benefits given on the second and third higher grade under the 1991 Scheme were withdrawn.

The petitioner was given the benefit of being placed in higher grade with effect from 1st June 1987 inter alia on the ground that he has completed 9 years of service on 27/5/1973 counted from the date of his regular appointment in the District Panchayat of Surat on 27th May 1964. By the impugned order, this date of giving benefit is sought to be withdrawn and advanced to 1st March 1990, on completion of 9 years of service in the District Panchayat, Mehsana with effect from the date he was transferred on his own request to the said district.

2. There is no dispute so far as the withdrawal of benefits of second and third higher grade benefits released to all incumbents of the State under the 1994 Resolution.

3. The short issue raised in this petition is whether, in the facts and circumstances of present case, petitioner is entitled to get benefit of the higher grade on completion of 9 years of service with effect from the date of his initial appointment or he is entitled to higher grade on completion of 9 years of service with effect from 1st March 1981.

4. The relevant clause of the resolution dated 16th August 1994 governing the transfer controversy reads as under :-

3.2 The First H.G.S. shall be granted to the employee who has completed 9 years of service in the respective cadre and pay scale provided that the said employee should not have got more than two promotions prior to this. For the purpose of granting the Higher Grade Scale 9 years service in respective pay scale means the regular service being taken into account for the purpose of seniority of employees recruited by approved method and rendered in the one and same cadre and grade shall be taken into consideration. However, the services of isolated cadres encadred in other cadres without the request of employee and the earlier service of isolated cadre which may be encadres hereafter or cadres whose pay scale is equal but nomenclature is changed may be taken into consideration for sanctioning the Higher Grade Scale. Similarly, in individual cases also, if the Government has made transfer from one cadre to other for public interest and pay scales of these posts are equal, the services rendered in both the cadres shall be taken into account for the scheme of Higher Grade Scale subject to the other conditions. For this purpose, the office concerned shall issue the certificate to the effect that the cadre of respective employee is changed for public interest."

The key words in the clause are, " For the purpose of granting the Higher Grade Scale 9 years service in respective pay scale means the regular service

being taken into account for the purpose of seniority of employees recruited by approved method and rendered in the one and same cadre and grade shall be taken into consideration."

This clause gives a clear indication that whatever period is to be taken into account for the purpose of counting the seniority of the employee in the cadre is to be counted for the purpose of this scheme as well. There is no dispute, and there cannot be that the basic ingredients of seniority is continuous officiation on the post with effect from the date of a regular appointment unless rules otherwise provide. It is not the case of either of the parties that other than this rule would govern the question determining the seniority of the petitioner vis-a-vis other employees in the cadre. If that has to be taken, then the starting point of period which is to be taken into account for the purpose of seniority commences with effect from 27th May 1964 and 9 years are completed on 27th May 1973 which justifies the order made earlier. However, it is contended by the learned AGP that since the petitioner was transferred at his own request from District Panchayat, Surat to District Panchayat, Mehsana, he has been placed at the bottom in seniority list amongst the persons in the cadre employed in the District Panchayat, Mehsana on the date of transfer and therefore, for the purpose of seniority of the petitioner, his services prior to his transfer to District Panchayat, Mehsana are not to be taken into account for the purpose of determining the seniority in the District Panchayat, Mehsana as the period prior to his transfer to District Panchayat, Mehsana is not to be counted for seniority in consonance with the clause 3.2 of the resolution dated 16th August 1994 which modified the earlier resolution of 1991 for the purpose of granting the higher grade scale on completion of 9 years of service has to be reckoned with effect from 1st March 1981 only which the petitioner completes on 1st March 1990. Therefore, the impugned order recalling the earlier fixation of higher grade scale with effect from 1st June 1987 has rightly been recalled and the petitioner has been given benefit with effect from 1st March 1990 on completion of 9 years on that date.

4. Having considered the carefully the rival contentions, I am of the opinion that there is no warrant to draw this inference that the petitioner has lost his services from 1964 for the purpose of reckoning seniority in the present cadre. At the relevant time, when the petitioner was recruited, the Gujarat Panchayat Act, 1961 was in force. Chapter XI of the Act of 1961 contains the

provisions relating to services of Panchayat. Section 203 envisages that for the purposes of bringing about the discharge of functions and duties of Panchayats, a Panchayat services shall be constituted in connection with the affairs of the Panchayat in pursuance thereof, the panchayat service was constituted. The provisions further envisage that the panchayat service was constituted of such classes, cadres, and posts and initial strength of officers and servants in each such class and cadre as the State Government may from time to time determine and such cadres may consists of District Cadres, Taluka Cadres and Local Cadres. It also envisages that that, subject to the provisions of the Act, the State Government may make Rules regulating the mode of recruitment and providing conditions of services, appointing to the panchayat services also for providing inter district transfer of service belonging to panchayat service and the circumstances on which and the conditions on which such transfers shall be made. Gujarat Panchayat Service [Transfer of Service] Rules 1968 governs the inter district transfers. The Rule 3 provide the conditions under which mode, the transfers can be made, [i] in the public interest; [ii] in order to absorb the members becoming surplus in one District or [iii] an application is made to the District Development Officer in that behalf by the incumbent. As a condition of such transfer, Rule 4 provides, that in the case of transfer, by way of absorption of a surplus employee of another district or at one's own request, such incumbent shall not claim seniority over the person who ranks last in the post having clear vacancy in the cadre to which such member may be appointed. As a result of such transfer, he takes seniority at the bottom amongst the regularly employed persons in the cadre at the place of transfer on the date of transfer. However, this does not envisage that the period of service for the purpose of seniority in all circumstances to be reckoned with effect from the date of transfer. That is to say, the period of past services in the parent district, he carries with him for the purpose of reckoning the seniority vis-a-vis a person appointed to the services of the district who comes after him. Therefore, it is not possible to accept the contention of the learned counsel for the respondents that, because of the operation of condition of inter district transfer on request, the petitioner is not entitled to compute the period of services rendered at District Panchayat, Surat for the purpose of counting seniority. The limited operation to which the rules provide affecting the seniority is vis-a-vis persons already in the employment at the time of transfer on request or at the time of absorption on being declared

surplus in the parent district. He loses seniority not because of not reckoning the period of past services rendered in parent district, but because of securing transfer on request as a condition for acceptance of such request.

5. It is next contended by learned counsel for the respondents that the petitioner is entitled to count only such services who are in the same cadre and grade. If the services are rendered in different cadres though in the same grade, the same may not be considered by clubbing the same unless it falls within the other provisions of the scheme where services rendered into different cadres can be clubbed together for the purpose of availing the benefit under the scheme. There is some force in this contention. As noticed above, section 203 of the Act of 1961 envisages constitution of the Panchayat Services having different cadres levels namely, District Cadres, Taluka Cadres and Local Cadres. Thus, Statute envisages separate District Cadres within the services constituted for the State. While the Statute itself provides that a servant belonging to a Taluka cadre shall be liable to be posted, whether by promotion or transfer in any Gram or Nagar in the same Taluka and the servant belonging to the Local Cadre shall be liable to be posted whether by promotion or transfer to the same gram or Nagar as the case may be. For the inter district transfer of employees of District Cadres, it left the matters to be provided under the Rules. The Rules of 1968 provided for inter district transfer of a member of panchayat services belonging to a district cadre to another district cadre. Scheme in this regard remains unaltered even under Panchayat Act, 1993. Therefore, the petitioner who was a member of panchayat services of Surat District Panchayat was member of District Cadre Surat till he served within Surat District and when he was transferred to the panchayat services of Mehsana district, he became member of Mehsana District Cadre. Therefore, it cannot be said that he rendered service in same cadre through out. This position is further clear from the fact that where the situation like the present arises, the scheme has envisaged that where a government has made a transfer from one cadre to other cadre in public interest and pay scales of these posts are equal, the services rendered in both the cadres shall be taken into account for the scheme of higher grade scale subject to other conditions. As the scheme has made specific provisions for inter cadre transfer in the public interest, it has made no such provisions for such inter cadre transfers on its own request. In those circumstances, a question of clubbing of period must

depend upon the provision governing such situation. Therefore, the two periods cannot be clubbed together for the purpose of claiming benefits under the Scheme.

6. However, the question does not rest here. It is not envisaged anywhere that any part of the services is not to be treated for the purpose of conferring benefit of the higher grade scale, if the person is otherwise entitled to it without clubbing of the periods. The Scheme does not express its applicability only to same cadre and grade, but applies to 'one and same cadre and grade'. The use of expression 'one and same cadre' must be interpreted in the context of object of scheme viz. to provide time bound promotion at least once on completion of a period of service, since regular appointment. If that period is completed in any one cadre, without aid of clubbing, there is nothing in the Scheme which can inhibit the incumbent from availing such benefit with effect from that date. If the incumbent has completed continuous regular service of requisite period, to be accounted for in that cadre, in more than two cadres of same grade, the benefit must go to the incumbent on the earlier of the two dates. Scheme has clear object of giving one promotional chance, in case actual promotion has not come one's way, on completion of nine years service in one and the same cadre after regular appointment. The question of continuous service for seniority is inextricably woven with the thread of granting promotion to incumbent at least once on completion of nine years of regular service in one cadre to combat stagnancy. The question of taking into account aggregated period as to any two cadres will arise only in case where the services in one cadre does not satisfy the condition of requisite period of service in that cadre. However, if a person qualifies for that benefit, remaining in one and the same cadre at particular point of time, merely because of the exigencies of service later in time the incumbent has been placed in different cadre, he cannot be deprived of that benefit by confining the question of extending benefit only to the computation of period to his present cadre. What is requisite condition is that he should have spent 9 years of regular service which is accountable for the purpose of seniority in one and the same cadre and grade, not necessarily in the present cadre. If a man has served in one district cadre for 4 years and has been transferred to another district cadre at his own request and he has served there for six years, in that event in either of the cadre, he has not completed 9 years service and he cannot take advantage unless the both are clubbed together. In the other case, a person may have served in one cadre for

more than 20 years and has been transferred to another cadre by loss of seniority. In such case, he is not deprived of the benefit of the scheme which has to operate from the date of entry in the service at different points when the conditions can be said to be fulfilled. In that event if a person has fulfilled the conditions for availing the benefit at any point, be it before his services are transferred in the present cadre affecting his seniority, there is no provision in the scheme which takes away that benefit because of the subsequent events. This is also in consonance with the object with which the scheme has been introduced.

7. In the present case, the petitioner who entered the services on regular selection in 1964 in the district cadre of Surat and had completed more than 9 years of service before he was transferred to the district cadre of Mehsana in 1986 with all other benefits of service attached with it. The other benefits would include if on extension of any scheme to those services, in future, for such benefits, he carries past service with him. As the petitioner had completed 9 years in the one and same cadre while at Surat in 1973 and he has otherwise fulfilled the conditions of eligibility under the scheme, that benefit cannot be deferred unless he completes the periods of 9 years once again in the new cadre also for the purpose of becoming eligible for second time.

8. Viewed thus, notwithstanding the fact that the petitioner is not entitled to club the period of service at Surat cadre and at Mehsana cadre, he having become eligible prior to his date of transfer to Mehsana District to the benefits of the resolution avowed object of which is to give relief against stagnancy by offering higher grade generally on completion of nine years regular service in one cadre, he is entitled to avail the benefit of the scheme with effect from the date it became operative i.e. 1/6/1987 by treating that he has completed 9 years of regular service which could be taken into account for the purpose of seniority of the employee and rendered in the one and same cadre and grade at Surat.

9. As a result, this petition is allowed. The impugned order is quashed. The earlier order made for releasing the benefit of first higher grade to the petitioner w.e.f. 1/6/87 on completion of 9 years service on 27/5/73 shall continue to remain in force and no recovery shall be made. Recovery if any made shall be restituted to the petitioner. Rule made absolute.

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